

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 260 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAVINDRABHAI MANILAL DOSHI

Versus

AMARSINHJI HIMMATSINHJI

Appearance:

MR MI PATEL for Petitioners

MR AM PAREKH for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/03/2000

ORAL JUDGEMENT

This is an application in revision under Section 115 of the Code of Civil Procedure, 1908 challenging the order of the court below dismissing the application of the present petitioners.

2. It appears that the first respondent was the

plaintiff in the aforesaid Civil Suit No.27/96 before the learned Civil Judge (SD), Himatnagar. He claims that he was wrongly removed as Trustee from the "Shri Khedbrahma Ambica Mataji Trust" and he, therefore, claims restoration and also prayed for compensation.

3. The petitioners being the defendants in the said suit filed written statement and contended that the suit is without permission of the Charity Commissioner under Section 51 of the Bombay Public Trust and hence it is not maintainable. The aforesaid issue was heard as preliminary issue by the trial court and the trial court found that the suit was maintainable. Feeling aggrieved by the said order of the trial court, the petitioners have preferred this Revision before this Court.

4. I have heard the learned Advocates for the petitioners. It has been mainly contended that the suit relates to an issue under the provisions of Bombay Public Trust Act, 1950 (for short 'the Act') and, therefore, the first respondent ought to have obtained consent from the Charity Commissioner before filing the suit. Section 51 of the Act makes it clear that a person can file suit of the nature specified in Section 50 of the Act on obtaining written consent from the Charity Commissioner. Therefore, the consent of the Charity Commissioner is required to be obtained before filing the suit provided the suit falls within the four corners of section 50 of the said Act. Therefore, it is required to consider provisions of Section 50 of the Act.

5. Clause (b) to sub-section (iv) of Section 50 makes it clear that if a person files suit to obtain a decree for the removal of a Trustee or a Manager, then the matter would fall within the four corners of Section 50 of the said Act. In the present case, the suit is not for removal of the Trustee or Manager. This can be gathered from the relief clause of the plaint itself. The first respondent has already been removed and he has challenged his removal and the suit is not to obtain a decree for the removal of the Trustee or Manager and hence it does not fall within four corners of Section 50 (iv)(b) of the said Act. No other provision is pointed out under which cause of action of the present suit falls. It clearly means that the suit does not fall within four corners of Section 50 of the said Act and consequently, the trial court was justified in holding that the suit, without consent of the Charity Commissioner under Section 51 of the said Act, is maintainable. Hence it cannot be said the order is without jurisdiction and in fact the trial court has not

committed any material irregularity relating to jurisdiction. Consequently the Revision is without any merit and it requires to be dismissed. It was not necessary to call upon the respondent to argue the matter.

6. Accordingly the Civil Revision Application is ordered to be dismissed with cost of the respondent. The interim relief staying the further proceedings of the suit pending before the trial court is vacated. Rule discharged.

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